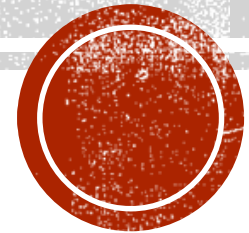


COVID FORECLOSURES

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DISCLAIMER

- ***Please note:*** *The following content is for informational purposes only. It is not to be interpreted as legal advice and the information contained is not necessarily applicable to your specific case.*
- You should consult an attorney for advice about your specific situation.



MORTGAGE FORECLOSURES IN NEW YORK STATE

- In New York State, foreclosing on a mortgage is not a quick process, and can in some circumstances take years to complete
- The bank (or lender or mortgage company) must follow a specific series of steps in order to foreclose on a mortgage in New York State
- There are plenty of procedures in place to help borrowers work with the bank to keep their homes
- For a borrower, paying attention and being involved in the process is critical
- New York, and the U.S. Federal Government, have implemented additional protections for borrowers in light of the COVID-19 pandemic
 - These protections, by and large, do not apply to VACANT properties



HARDSHIP AND DEFAULT

- Hardship—The reason why a borrower fell behind on their payments
 - Ex.) Unemployment, loss of rental income, increased medical expenses, etc.
 - Just deciding not to pay your mortgage is not a valid hardship
- Default—Missing enough payments that you have broken your contractual obligation under the mortgage
 - Most times lenders will not consider a borrower to be in default until they miss a few payments, but defaults can occur with just one missed payment
 - After default, the lender may no longer accept normal payments, instead requiring the entire back owed amount
- The lender will also add late fees and interest will continue to accrue



COVID PROTECTIONS FOR HARDSHIP

- If a borrower has a COVID-19 related hardship they may be able to get a forbearance
 - Puts payments on pause for a specified amount of time, typically 3 months, while the borrower deals with the COVID-19 hardship
 - The length and nature of the forbearance will depend on the individual mortgage servicer
 - If a person thinks they need a COVID forbearance they should contact their servicer directly before they miss too many payments
 - NYS moratorium until August 31, 2021 with a hardship declaration submitted.
 - https://www.nycourts.gov/eefpa/PDF/Foreclosure_Hardship_Declaration-English.pdf



90-DAY NOTICE

- In New York the lender is required to send a notice to the borrower informing them that if the missed payments, with whatever fees have accrued, is not paid within 90 days, the lender will start foreclosure proceedings
- This does not mean that the lender has foreclosed or will immediately sell the house
 - Instead, this gives the borrower notice that a foreclosure may happen and gives the borrower another chance to bring the loan current
- Expect that this notice will be sent to all the borrowers on the loan, even if only one borrower has been making the payments or one borrower no longer lives in the house



FORECLOSURE COMPLAINT

- The document that starts the foreclosure, filed with the appropriate County or Supreme court
 - Location depends on where the property is, not where the borrowers live
- The lender will serve (send legal papers to) the borrower
- Once served, the borrower has 20 days to answer the complaint, but can get more time to file the answer at Settlement Conference
- The lender will likely add their attorneys' fees at this time
- Once the complaint is filed, the foreclosure is public information
- All borrowers are named as defendants and can be liable for the mortgage even if there was a divorce



ANSWER

- Document filed with the court disputing the claims the lender made in the Complaint
- Essentially this raises issues which dispute the lender's legal right to foreclose
- Several standard defenses, which are not applicable in all situations
- Consult with an attorney before filing an answer



SETTLEMENT CONFERENCES

- New York State procedure meant to give borrowers a chance to negotiate a workout with the lender in good faith
- The court will schedule a Settlement Conference in each foreclosure case, and will send a letter to the borrower telling them when the first conference will be held
- Foreclosure Prevention Project Agencies (Center for Elder Law and Justice, Legal Aid Bureau, and Western New York Law Center) have attorneys at the initial conferences to conduct intake and provide help with the first conference.
- COVID UPDATE: Courts are now scheduling initial conferences, and have been working with Legal Service Agencies on intakes
 - Settlement conferences will be held virtually until further notice. If needed, courts will have kiosks available for people to access the virtual conference
 - To make things run more smoothly, please call the Foreclosure Prevention Project at 716-828-8428 BEFORE your first conference.



SETTLEMENT CONFERENCES CONT'D

- Settlement Conferences are run by a court referee, not a judge.
 - These are not times for either side to argue the merits of the foreclosure
 - Instead the court referee is there to make sure both parties come together to negotiate a "mutually agreeable resolution" in good faith.
 - While in the Settlement Conference Part the foreclosure will be put on hold
- At the initial conference the borrower will be asked if they live in the mortgaged property and if they want to keep it
 - To qualify for the Settlement Conference Part the borrower must live in the property and want to keep the property
- If the borrower qualifies, the court will schedule a follow up conference. The borrower will receive an application for loss mitigation, and will be given 30 days to complete the application and submit it to the bank
 - The bank will then have 30 days to review the application, and will most likely request additional documents
- So long as both sides are continuing to negotiate, the case will stay in the Settlement Conference Part
- If you have an attorney you do not need to attend any settlement conferences after the first. Your attorney will appear on your behalf



LOSS MITIGATION

- Involves submitting an application with supporting financial documents
- Common Outcomes:
 - Loan Modification—Restructures loan to bring the borrower current and set up a new payment schedule
 - Short Sale—Selling the property for less than what is owed, with the bank forgiving the remainder
 - If you owe less than what the house is worth and want to sell the house to pay off the mortgage, you generally can do that
 - Deed in Lieu of Foreclosure—Deeding the property to the bank and moving out, with the bank forgiving the remainder owed on the loan
 - Sometimes a Short Sale or a Deed in Lieu will also involve cash assistance
- Loan Modification is the ideal outcome most of the time. The bank places the approved borrower in a Trial Payment Plan (TPP) for 3-6 months to see that the borrower can make the new payments. Once that is completed the bank will roll the borrower into a permanent loan modification.
 - Lender will recapitalize back owed amount into the new loan principal



POST CONFERENCE

- If the matter cannot be resolved in Settlement Conference the court will let the foreclosure proceed
- The case will be assigned to a judge, and the bank will need to submit two motions
 - Motion for an Order of Reference—Asks for the court to appoint a third party referee to calculate the amount owed on the loan
 - Motion for a Judgment of Foreclosure and Sale—Asks the court to allow the bank to sell the property at auction
 - These motions typically take 6 months to complete before the house goes to sale
- This is when issues raised in an Answer are decided
- Once an individual's house is sold at auction the buyer may start an eviction proceeding
- COVID UPDATE: Courts are required to schedule an intermediate conference before they schedule a date to rule on these motions. If the borrower does not appear at the first conference, courts must schedule a second. If the borrower again fails to appear the court may rule on the motion.
 - This does not apply to VACANT properties
 - As a practical matter COVID restrictions will likely extend the 6 month timeline even without the conferences, but borrowers should not assume this will happen



ADDITIONAL COVID CHANGES

- Moratorium on foreclosure for loans backed by a federal agency until at least July 31, 2021
 - FHA, VA Loans, and USDA loans
 - <https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-15hsgml.pdf>
- Fannie Mae and Freddie Mac loans—Moratorium extended until at least July 31, 2021
 - Multi-family forbearance extended through September 2021
 - <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-COVID-19-Forbearance-Period-and-Foreclosure-and-REO-Eviction-Moratoriums.aspx>
- This prevents lenders from initiating or continuing with foreclosures on federally backed mortgages, and some servicers with loans not covered under the moratorium are still following this schedule
- Contact your servicer if you need to find out what kind of loan you have



FORECLOSURE SCAMS

- Since foreclosures are public information, sometimes scammers will target borrowers in foreclosure
 - Unfortunately, elderly borrowers have a higher risk of being targeted by scammers
- Commonly, a scammer will send a letter to the borrower telling them that there is an auction scheduled in the next week and promising to solve the foreclosure with a very low interest rate loan
- Other times they will say they can rework your mortgage after a sale, or ask for payment saying they can guarantee a loan modification (no reputable organization can or will guarantee you will get a loan modification)
- Phishing scams are also common, where scammers call pretending to be your lender asking for personal information.
 - If you feel uncomfortable, hang up and call your lender directly with the number your lender put on your mortgage statement



LEGAL HELP FOR BORROWERS

- CELJ services are free and available to borrowers who reside in the property and want to retain home ownership, but cannot afford an attorney
- Please reach out if you have any questions or need assistance
- Contact: 438 Main St, Suite 1200, Buffalo, NY14202. Tel: 716-853-3087.
- Foreclosure Prevention Project

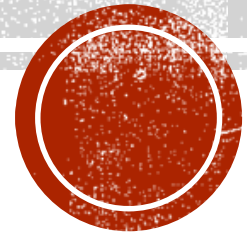


LANDLORD-TENANT LAW

FUNDAMENTAL CONCEPTS

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DEFINING THE LL-TN RELATIONSHIP

- LL-TN RELATIONSHIP
- QUIET ENJOYMENT
- IMPLIED WARRANTY OF HABITABILITY
- LL'S RIGHT OF ENTRY
- DUAL COMPONENTS: CONTRACT AND CONVEYANCE



SENIOR CITIZEN HOUSING PROTECTIONS/BENEFITS

- Restriction on evicting senior tenants from nursing homes.
- Terminating a lease to relocate to a family member's residence, adult care facility, or senior or subsidized housing.
- Summary
- A tenant, who is at least 62 years old or who will reach that age during a lease term, or who has a spouse who is or will reach that age, has the right under New York law to terminate the lease and to be relieved of liability there under when relocating to a family member's residence, health/adult care facility, or senior or subsidized low income housing. The tenant must terminate the tenancy by 30 days' written notice to the landlord with documentation of admission or pending admission to one of the qualifying facilities or a physician's certification, accompanied by a notarized statement from a family member, stating that the senior citizen is related and will be relocating to that family member's residence for a period of no less than six months. The landlord is expressly prohibited from interfering with the tenant's removal of its property. A violation can expose the miscreant to a misdemeanor conviction, which may result in imprisonment for up to a year, a \$1,000.00 fine, or both.



OCCUPANCIES SIMILAR TO TENANCIES

- **DISTINGUISHED BY: NO LL-TN RELATIONSHIP EXISTS**
- **ILLEGAL EVICTION LAW COVERS “NON-TENANTS”**
- **LICENSE DISTINGUISHED FROM LEASE; TERMINATION**
- **SQUATTER DEFINED; NOTICE REQUIREMENTS; TERMINATION**
- **10 DAY NOTICE TO QUIT; SUMMARY PROCEEDING “RPAPL 713”**



LEASE ESSENTIALS

- EXPRESS OR IMPLIED; A tenancy is a consensual occupancy arrangement which can be created by an express formal "lease" or by operation of law.
- LEASE "DEFINED" An agreement for a fixed term which affords a party exclusive possession and control of delineated space (whether it be commercial or residential in nature), in exchange for the payment of money or consideration, is commonly known as a "lease."
- ORAL OR WRITTEN AGREEMENT (STATUTE OF FRAUDS)
- PRO'S AND CON'S
- ESSENTIAL TERMS; the agreement should minimally confer exclusive possession and control, identify the parties to the accord, describe the premises being demised, list the rent sought and delineate a specific-occupancy term.
- RECEIPT OF PAYMENT



SECURITY DEPOSITS

- **“SECURITY DEPOSIT” DEFINED:** A "security deposit" is the consideration advanced on a lease or license agreement and is held by the lessor or licensor to ensure an occupant's full performance of the terms and conditions of the underlying contract. Security will generally consist of the deposit of monies (or other consideration), in an amount perceived to be sufficient to afford the tenant an incentive to fulfill its obligations and to safeguard the lessor's or licensor's interest in the premises. However, for rent-regulated tenants, the maximum amount of the security deposit is generally restricted to one month's rent.



SECURITY DEPOSITS

- **OFFSET DAMAGES**
- **HOUSING STABILITY AND TENANT PROTECTION ACT (“HSTPA”):** Effective June 14, 2019, a tenant's security deposit must be returned within two weeks after the residential tenancy's termination date. Any willful failure to return a security deposit, or portion thereof, may be subject to punitive damages not to exceed twice the amount of the deposit. HSTPA eliminates a landlord's ability to withhold a portion of a residential tenant's security deposit based on attorneys' fees, late fees, additional rent, or other miscellaneous charges.



TERMINATING LL-TN RELATIONSHIP

- **Power of termination**
- Summary
- Generally, a tenancy will not end prior to its scheduled expiration date or term unless authorized by the parties' lease or applicable law. For example, most lease agreements contain forfeiture provisions which permit early termination upon the tenant's violation of a substantial obligation of the tenancy. Several state statutes also authorize termination when, for instance, the premises are used for an illegal or immoral purpose or are destroyed. Rent-regulated tenancies may only be ended on the grounds set forth in the applicable regulatory schemes.



TERMINATING LL-TN RELATIONSHIP

- Power of termination—Lease-forfeiture provisions, generally—Termination for breach of a "substantial obligation" of the tenancy.
- Conditional limitations
- Self-help prohibited for removal of tenants
- Notice to Cure, generally
- Notice of Termination, generally



SUMMARY PROCEEDINGS

- **Historical perspective**
- Summary
- The New York State Legislature created summary proceedings in 1820 to afford landlords an expeditious means of recovering real property from tenants who refused to remit rent after a demand, or who wrongfully retained possession of the premises after the expiration of their lease term. In 1900, the law was incorporated into the state's Civil Practice Act, and in 1962 was made a part of the Real Property Actions and Proceedings Law. Currently, the relevant statutory parameters of a summary proceeding are found at Article 7 of the N.Y. Real Property Actions and Proceedings Law, and Article 4 of the Civil Practice Laws and Rules ("CPLR"), the successor to the Civil Practice Act.



NON-PAYMENT PROCEEDING

- The nonpayment proceeding enables a landlord to obtain a judgment of possession and a money judgment against a tenant for unpaid rent. It is distinct from the holdover proceeding, which permits a landlord to recover possession from a former tenant or other occupant who wrongfully enters or remains in possession of the premises without the landlord's permission.
- When a tenant defaults in the payment of rent, after a demand, the landlord may begin a nonpayment case. The respondent embroiled in such a dispute may ultimately preserve its tenancy by remitting the monies due, even after judgment, and at any time prior to the execution of the eviction warrant.



HOLDOVER PROCEEDING

- **HOLDOVER PROCEEDINGS: Distinct from nonpayment proceedings**
- Summary
- There are two principal types of summary proceedings—the nonpayment and the holdover. While their ultimate aim is to restore the landlord to possession of the premises, the legal and factual predicates of each proceeding are quite distinct. A holdover may only be instituted against a party wrongfully occupying the premises without permission. The nonpayment proceeding, which seeks to recover possession from a lawful occupant who has failed to remit rent after demand, may only be maintained against a party that is a "tenant." As a result, nonpayment and holdover proceedings are considered "mutually exclusive remedies."



SUMMARY PROCEEDING PROCEDURE

- Predicate Notice: There are many notices that are required by law to be served on the tenant prior to the commencement of a holdover proceeding, depending on the nature of the tenancy and the grounds upon which the proceeding is brought. They include Notices to Quit, Notices to Cure a Substantial Violation of the Lease, Notices of Termination or Notices of Intent Not To Renew a Lease.
- Predicate Notice
Notice of Petition/Petition
Affidavit of Service
- The non-payment or holdover petition must contain:
 - 1) the interest of the petitioner in the premises;
 - 2) the interest of the respondent in the premises and his/her relationship with the petitioner;
 - 3) a description of the premises;
 - 4) the facts upon which the proceeding is based; and,
 - 5) the relief sought.



THANK YOU!!!

